

# **CITY ATTORNEY EMPLOYMENT AGREEMENT**

**Between**

**The City of Vallejo  
and  
Claudia M. Quintana**

## **1. Parties and Date**

This Agreement is entered into as of July 24, 2012 by and between the City of Vallejo, California, a municipal corporation (the "City"), and Claudia M. Quintana, an individual (the "City Attorney"). The City and the City Attorney are sometimes individually referred to as a "Party" and collectively as "Parties."

- A. The City requires the services of a City Attorney.
- B. The City Attorney represents that she has the necessary education, experience, skills and expertise to serve as the City's City Attorney.
- C. The City Council of the City (the "Council") desires to employ the City Attorney to serve as the City Attorney of City.
- D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of the Charter of the City of Vallejo and the Vallejo Municipal Code.
- E. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

## **2. Employment**

The City hereby employs the City Attorney as its City Attorney, effective July 1, 2012, and the City Attorney hereby accepts such employment.

## **3. Commitments and Understandings**

### **A. The City Attorney's Obligations**

#### **(1) Duties and Authority**

The City Attorney shall be the chief administrative officer of the Law Department and shall have all of the duties, powers, authority, and responsibilities of City Attorney as the same are specifically prescribed and set forth in the City Charter, and in particular Section 401 thereof, and the ordinances of the City, and in particular those provided in the Vallejo Municipal Code, Sections 2.10.070 and 2.10.072, resolutions, policies, rules and regulations, as from time to time existing thereunder. The City Attorney shall also perform those lawful duties and follow those lawful orders and instructions given to her by the Council when sitting at a lawfully convened meeting of the Council.

(2) Hours of Work

- (a) The City Attorney is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Attorney's position. The City Attorney does not have set hours of work as the City Attorney is expected to be available at all times.
- (b) It is recognized that the City Attorney must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the City Attorney's schedule of work each day and week shall vary in accordance with the work required to be performed. The City Attorney shall spend sufficient hours on site to perform the City Attorney's duties; however, the City Attorney has discretion over the City Attorney's work schedule and work location, subject to the approval of the City Council.
- (c) The City Attorney shall not engage the practice of law or giving of legal advice for compensation without the express written approval of a majority of the City Council, which may be withheld in the City Council's unfettered discretion.

(3) Disability or Inability to Perform

- (a) In the event the City Attorney becomes mentally or physically incapable of performing the City Attorney's essential functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than 6 months, the City Council may, subject to state and federal law, terminate the City Attorney. If the City Council does elect to terminate the City Attorney due to incapacity, the City Attorney shall not receive severance benefits provided in Section 5.C below.

(4) Goal-Setting

The City Attorney commits to spending time each year outside of regular City Council meetings to work with the City Council on setting goals and priorities for the Law Department, and to work on issues that may be inhibiting the maximal achievement of City goals. The first such goal setting meeting shall occur no later than October 1, 2012.

B. City Obligations

- (1) The City shall provide the City Attorney with the compensation, incentives and benefits, specified elsewhere in this Agreement.
- (2) The City shall provide the City Attorney with a private office, secretary, staff, office equipment, supplies, and a stipend for her use of her own cell phone as provided in Section 4(A)(4), and all other facilities and services adequate for the performance of the City Attorney's duties, as approved by the City Council in the City's annual budget.

- (3) The City shall pay for or provide reimbursement for all reasonable and lawful business expenses of the City Attorney incurred as a result of performing the duties of the City Attorney, as well as a computer, laptop computer, high-speed internet access, electronic calendar, fax, copy machine and similar devices. The City shall provide the City Attorney a City credit card to charge appropriate and lawful business expenses, as approved by the City Council in the City's annual budget.
- (4) The City agrees to pay the professional dues and subscriptions on behalf of the City Attorney which are necessary for the City Attorney's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the City, and for the City Attorney's continued professional participation and advancement and as approved by the City Council in the City's annual budget.
- (5) The City agrees to pay the travel and subsistence expenses of the City Attorney to pursue official and other functions for the City, and meetings and occasions to continue the professional development of the City Attorney, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the City Attorney serves as a member and as approved by the City Council in the City's annual budget.
- (6) The City also agrees to pay reasonable costs for the travel and subsistence expenses of the City Attorney for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Attorney and as approved by the City Council in the City's annual budget.
- (7) The City Attorney shall prepare and submit to the City Council on an annual basis, or upon request of the Council as part of a performance evaluation, a report detailing the expenses and costs related to Subsections (4), (5) and (6).

C. City Council Obligations

- (1) The City Council commits to spending time each year outside of regular City Council meetings to work with the City Attorney on setting goals and priorities for the Law Department, and to work on issues that may be inhibiting the maximal achievement of City goals. The first such goal setting meeting shall occur no later than October 1, 2012.
- (2) Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, contractors, and consultants under the supervision of the City Attorney solely through the City Attorney or the City Attorney's designee, and neither the City Council nor any member thereof shall give orders to any subordinate of the City Attorney, either publicly or privately.

- (3) The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Attorney.
- (4) Except as otherwise expressly provided in this Agreement or in the City's Charter, Municipal Code, policies, resolutions, rules or regulations, neither the City Council nor any of its members shall interfere with the lawful execution of the powers and duties of the City Attorney. Notwithstanding the foregoing, the City Attorney shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

**D. Mutual Obligations**

**(1) Performance Evaluation**

- (a) Annual performance evaluations are an important way for the City Council and City Attorney to ensure effective communications about expectations and performance.
- (b) The City Council recognizes that for the City Attorney to respond to its needs and to grow in the performance of the City Attorney's job, the City Attorney needs to know how the City Council Members evaluate the City Attorney's performance.
- (c) To assure that the City Attorney gets this feedback, the City Council shall conduct an evaluation of the City Attorney's performance at least once each year. The City Council and the City Attorney agree that performance evaluations, for the purpose of mid-course corrections, may occur quarterly or several times during each calendar year.
- (d) The City Attorney and the City Council will create goals or other outcome measures that will provide the basis for the next performance review on an annual basis on or before October 1 of each year.
- (e) The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Attorney. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the City Attorney.

**4. Compensation**

The City agrees to provide the following compensation to the City Attorney during the term of this Agreement:

**A. Compensation & Required Employer Costs**

**(1) Base Salary**

- (a) The beginning annual salary for the position of City Attorney shall be One Hundred Ninety Four Thousand Dollars (\$194,000.00). Thereafter, the City Attorney's annual salary increases, if any, shall be based on performance and as determined by the City Council, in the exercise of its sole and unfettered discretion.
- (b) The City Attorney shall be paid at the same intervals and in the same manner as regular City employees.
- (c) The City shall not at any time during the term of this Agreement (i) reduce the compensation, leave and/or other financial benefits of the City Attorney or (ii) increase the City Attorney's financial obligations to contribute to, assume the cost of or pay for any benefits, unless as part of a (iii) reduction in the same compensation, leave and/or other financial benefits the Executive Management Employees ("Management Employees") experience, or (iv) an increase in the same financial obligations experienced by the Management Employees, respectively, and then in no greater percentage than the (v) average reduction in the relevant compensation, leave and/or benefit or (vi) average increase in the financial obligations, as the case may be, experienced by all of the Management Employees.

**(2) Deferred Compensation**

To the extent authorized by applicable federal law and regulations applicable thereto ("federal laws"), City agrees to pay annually, on behalf of City Attorney, Twenty Four Thousand Dollars (\$24,000.00) [or the then applicable maximum allowable contribution pursuant to applicable federal laws] into the City Attorney's deferred compensation accounts with the City's current deferred compensation providers.

**(3) Administrative Leave**

In recognition of the extraordinary hours necessary to be worked by the City Attorney, in the event and at the time that Management Incentive Pay is abolished, then the City Attorney shall be provided with 80 hours of paid administrative leave per year to be taken at her discretion. Paid administrative leave shall not accrue year-to-year. If Management Incentive Pay is abolished effective on a day other than July 1, then for the first year during which the City Attorney is entitled to administrative leave, the amount of said leave shall be pro-rated based on the number of days left in the fiscal year, divided by 365.

**(4) Cell Phone Allowance**

The City Attorney shall be provided a monthly cell phone allowance of \$100.00 in exchange for making a non-City-owned cell phone available for the City Attorney's own use and for City-related business and/or functions during, before and after normal work hours.

(5) Required Employer Costs

The City shall pay the following, subject to the following conditions:

- (a) Federal Insurance Contributions Act (FICA).
  - (i) Old Age Survivor and Disability Income (OASDI).
  - (ii) Medicare
- (b) Unemployment Compensation.
- (c) The employer's share of California Public Employees Retirement System (CALPERS) rate, subject to the following qualifications:

The City contracts with CalPERS for retirement benefits. The City Attorney will pay the Employee's share of 8% and 1% of the Employer's share of the CALPERS rate for a total of 9%; provided, however, that notwithstanding the foregoing, the City Attorney shall be required to pay the Employee's and Employer's share of the CALPERS rate to the same extent as the Management Employees pay the Employee's and Employer's share of said rate.
- (d) The cost of any fidelity or other bonds required by law for the City Attorney.
- (e) The cost to defend and indemnify the City Attorney as provided in Section 6.E. below.
- (f) Workers' compensation to the same extent provided to other employees of the City.

B. Basic Benefits

(1) General

The City Attorney is entitled to the same benefits as are available to other Management Employees with twenty-five (25) years of service, unless specifically revised herein.

(2) Leave Allowance

- (a) The City Attorney shall be given 160 hours of annual leave credit effective upon the execution of this Agreement. The City Attorney shall then begin accruing annual leave at a rate of 200 hours per year. The City Attorney shall take at least 80 hours of annual leave each fiscal year. The City Attorney may choose to cash out up to 160 unused, annual leave hours at any time during each fiscal year. Upon the termination of this Agreement and the City Attorney's employment, she shall be paid accrued but unused annual leave hours at a rate based upon her then base salary.
- (b) The City Attorney shall be given 96 hours of sick leave effective upon the execution of this agreement and shall accrue on an annual

basis the same as other exempt employees. Upon retirement from the City, the City Attorney shall not be entitled to cash out any remaining sick leave balance.

- (c) The parties acknowledge that the City Attorney shall be entitled to Management Incentive Pay of 120 hours per fiscal year, to be taken in cash, so long as it is provided as a benefit to the Management Employees.

## 5. Separation

### A. Resignation/Retirement

The City Attorney may resign at any time and agrees to give the City at least 60 days advance written notice of the effective date of the City Attorney's resignation, unless the Parties otherwise agree in writing. If the City Attorney retires from full time public service with the City, the City Attorney shall provide 6 months' advance notice.

### B. Termination & Removal

- (1) City Attorney is an at-will employee serving at the pleasure of the City Council under the authority of Vallejo Charter Section 401.
- (2) The City Council may remove the City Attorney pursuant to section 407 of the Charter. Notice of termination shall be provided to the City Attorney in writing. Termination as used in this section shall also include: (i) a request by the City Council that the City Attorney resign, (ii) a percentage reduction in compensation, leave or other financial benefits of the City Attorney greater than the average percentage reduction experienced by the Management Employees during the same fiscal year in the same benefit, (iii) a percentage increase in the City Attorney's financial obligations to contribute to, assume the cost of or pay for any benefits greater than the average percentage increase in the Management Employees' financial obligations to contribute to, assume the cost of or pay for the same benefits occurring during the same fiscal year or (iv) the elimination of the City Attorney's position. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed regular meeting of the City Council.
- (3) Pursuant to the provisions of Vallejo Charter Section 407(c), an affirmative vote of at least five members of the City Council shall be required to terminate the City Attorney within 60 days after her initial appointment or within 60 days after any election at which members are elected to the City Council.

### C. Severance Pay

- (1) In the event the City Attorney is terminated as defined in Section 5 B (2) by the City Council during such time that the City Attorney is willing and able to perform the City Attorney's duties under this Agreement during the term of this Agreement or any extension thereof, then in that event the City agrees to pay the City Attorney a lump sum cash payment equal to twelve months' base salary, or equal to her monthly salary multiplied by the numbers of months left on the unexpired term of this Agreement,

whichever is less. In addition, the City shall extend to the City Attorney the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). The City agrees to pay half of the premium for the City Attorney's COBRA coverage provided that the City Attorney is not already receiving medical coverage under another plan, for the same number of months for which the City Attorney is entitled to a lump sum cash payment under this Section, or until Employee either secures full-time employment or obtains other health insurance, whichever of these three events first occurs. The City Attorney shall notify the City within 5 days of securing new full-time employment or insurance.

- (2) In exchange for the consideration provided in paragraph C (1), the City Attorney shall execute a release of all claims in a form mutually acceptable to the Parties.

D. Separation for Cause

- (1) Notwithstanding the provisions of Section 5.B.2, the City Attorney may be terminated for cause. As used in this section, "cause" shall mean only one or more of the following:
  - (a) Willful misconduct;
  - (b) Malfeasance;
  - (c) Dishonesty for personal gain;
  - (d) Conviction of a misdemeanor involving moral turpitude or any felony, provided that the City Attorney may be placed on administrative leave without pay should she be charged with a felony;
  - (e) Continued abuse of drugs or alcohol that materially affects the performance of the Attorney's duties;
  - (f) Repeated and protracted unexcused absences from the City Attorney's office and duties;
  - (g) Willful abandonment of duties;
  - (h) Acceptance of employment for another source which is inconsistent with full time employment as Vallejo's City Attorney and in violation of Section 6. D of this Agreement;
  - (i) Failure to follow the lawful orders or instructions given by the City Council when it is sitting as a body in a lawfully held meeting;
  - (j) Death or incapacity due to injury or illness (physical or mental);
  - (k) Resignation by the City Attorney for any reason other than described in Section 5.B.2;
  - (l) Willful violation of any conflict of interest laws or regulations;
  - (m) Fraud or dishonesty in securing this appointment;
  - (n) Willful violation of State or Federal discrimination laws concerning race, religious creed, color, national origin, ancestry, sexual orientation, physical or mental disability, marital status, sex or age concerning either members of the general public or City employee(s); or
  - (o) Willful or unlawful retaliation against any other City official or employee or member of the general public who in good faith reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or directly related thereto.
  - (p) Suspension of City Attorney's right to practice law by the State Bar of California, or City Attorney's failure or refusal to maintain a California State Bar license in good standing.
- (2) In the event the City terminates the City Attorney for cause, then the City may terminate this Agreement immediately, and the City Attorney shall be



entitled to only the compensation accrued up to the date of termination, and such other termination benefits and payments as may be required by law. The City Attorney shall not be entitled to any severance benefits as provided in Section 5(C)(1).

- (3) In the event the City terminates the City Attorney for cause, the City and the City Attorney agree that neither Party shall make any written or oral statements to members of the public or the press concerning the City Attorney's termination except in the form of a joint press release which is mutually agreeable to both Parties. The joint press release shall not contain any text or information that would be disparaging to either Party. Provided, however, that either Party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public.
- (4) In the event the City Attorney dies while employed by the City under this Agreement, the City Attorney's beneficiaries or those entitled to the City Attorney's estate, shall be entitled to the City Attorney's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

## 6. Miscellaneous Provisions

### A. Term

#### (1) Initial Term

The Initial Term shall be for a period of 60 months commencing on July 1, 2012, and continuing until July 1, 2017 (the initial "Termination Date"), unless terminated earlier in accordance with Section 5.

#### (2) Subsequent Terms

This Agreement shall automatically renew as provided herein unless the City gives the City Attorney timely notice of non-renewal. The City must give the City Attorney written notice of non-renewal at least 6 months prior to the initial Termination Date or any succeeding Termination Date. Unless such notice of non-renewal is timely given, this Agreement shall automatically renew for an additional year and a new Termination Date shall be accordingly established. If notice of non-renewal is given, the City Council may at any time choose to relieve the Attorney of his or her duties and pay any remaining salary and benefits as a lump sum.

### B. Provisions that Survive Termination

Only the sections of this Agreement that by their terms are reasonably intended to survive the termination of this Agreement shall survive the termination of this Agreement.

### C. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Attorney. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

D. Conflict of Interest

- (1) The City Attorney shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.
- (2) The City Attorney shall also be subject to the conflict of interest provisions of the California Government Code, California State Bar Rules of Professional Responsibility, and any conflict of interest code applicable to the City Attorney's City employment.
- (3) The City Attorney is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

E. Indemnification

Except as otherwise provided by law, and provided that City Attorney complies with the provisions of Sections 825 and 825.6 of the California Government Code, as now existing or hereafter amended, City shall defend, hold harmless, and indemnify City Attorney against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of City Attorney's duties in accordance with the provisions of Sections 825 and 825.6, as now existing or hereafter amended. City may conduct such defense reserving the rights of City not to pay the judgment, compromise or settlement until it is established that the injury arose out of an act or omission occurring within the scope of City Attorney's employment as an employee of City. City is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of City Attorney's employment as an employee of City. Nothing in this Agreement authorizes or obligates City to pay that part of any claim or judgment that is for punitive or exemplary damages. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom only to the extent authorized in Sections 825 through 825.6, as now existing or hereafter amended.

If the City Attorney is convicted of a crime involving an abuse of her office or position, as defined in Government Code section 53243.4, then the City Attorney shall fully reimburse the City for (1) any paid administrative leave salary paid by the City to the City Attorney pending any investigation concerning said crime, (2) funds provided to the City Attorney for her legal criminal defense, and/or (3) any severance pay or cash settlement paid to the City Attorney related to her termination by the City. Said reimbursements are required if such payments are made, even if the payments were made by the City in the absence for any contractual requirement to do so.

F. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

G. Jurisdiction and Venue

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Solano County, California.

H. Entire Agreement

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

I. Waiver

Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

J. Ambiguity

The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

K. Headings

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

L. Notice

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the City Attorney or the City shall be required, or may desire, to make shall be in writing and shall be sent by postage prepaid first class mail or hand-delivered to the respective Parties as follows:

(1) If to the City:

Mayor  
555 Santa Clara Street  
Vallejo, California 94590

(2) If to the City:

Daniel E. Keen, City Manager  
555 Santa Clara Street  
Vallejo, California 94590

(3) If to the City Attorney:

Claudia M. Quintana  
3445 Edgewater Place  
Vallejo, California 94591

Notices shall be deemed received upon receipt or upon depositing in the U.S. Mail postage prepaid first class mail.

M. Conflict with Charter

Should any provision of this Agreement be found to conflict with the Charter of the City of Vallejo, the provisions of the Charter shall control.

N. Facsimile Signatures

This Agreement shall be binding upon the receipt of facsimile signatures; provided, however, that any person transmitting his or her signature by facsimile shall promptly send an original signature to the other party.

6. Execution

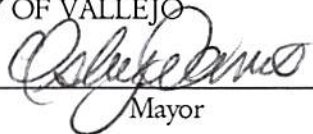
IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

"City"

"City Attorney"

CITY OF VALLEJO

By: \_\_\_\_\_

  
Mayor

\_\_\_\_\_ Date



Claudia M. Quintana

7-24-12  
\_\_\_\_\_ Date

ATTEST:

By: \_\_\_\_\_

  
City Clerk

7-26-12  
\_\_\_\_\_ Date